

Clyde and Co

Question 1: Which of the following best expresses your view of the proposed Bill?

Unsure

At the present time, in the absence of the draft Bill, we are unsure as to our position on any Bill. The proposal is that the Bill would only apply to those industrial diseases which are developed as a consequence of exposure after the commencement date of the Bill. We support this position.

Those responsible for causing individuals to require NHS treatment as a consequence of road traffic accidents or accidents at work are already held liable for at least some of the cost of that treatment. The proposed Bill seeks to treat victims of industrial disease in the same way. This is not straightforward for a number of reasons, and a final position on the proposed Bill will be taken on sight of the Bill.

The introduction of NHS charges in 2003 for EL and PL claims considered whether the same should be applied to disease claims. The conclusion at the time was that disease claims should be excluded due to the practical difficulties involved. It is not clear that those difficulties have changed since 2003.

Question 2: What do you think would be the main practical advantages and disadvantages of the proposed Bill?

If the Bill is framed appropriately, then it will provide clarity as to which conditions are covered, what sums may require to be repaid and by whom. The proposed Bill also seeks to ensure that there is a consistent approach with claims arising from Industrial disease, road traffic accidents and accidents at work.

As a consequence of the liability to meet the costs being placed upon the negligent party, this will, or certainly should, result in improved health and safety as a consequence of the financial implications if the common law/statutory regime is not adhered to.

The other key benefit of the proposed Bill is that it clearly states that it will only apply to industrial diseases caused by exposure which takes place after the coming into force of the Bill.

At the present time one disadvantage is that the proposal does not make clear how the situation will be dealt with where there is exposure before and after the coming into force of the Bill. In such circumstances there will clearly be an issue in seeking to deal with the extent of the two different periods of exposure, and also the extent to which the exposure has caused the condition. This will be relevant in respect of exposures with single employers, but also where there are multiple employers before and after the coming into force of the Bill.

One other troublesome area is in respect of individuals who have an industrial disease, but who also have other co-morbid conditions. For example an individual may have

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some respiratory or lung condition alongside a significant past smoking history. It is unclear at this stage how any proposed Bill will deal with such situations. The treatment of individuals with industrial disease is not always as straightforward as it can be for accident victims.

The proposed Bill only relates to Scotland. One issue which may well arise is the situation where an individual is treated for industrial disease in Scotland as a consequence of exposure that may have taken place in England. The proposed Bill will have to deal with this scenario.

Many of the points highlighted make it clear that the introduction of the proposed Bill for Industrial Disease is going to be complex. It is unclear at this stage if the administration of such a scheme is going to be handled by the DWP or a separate body that will require to be set up by the Scottish Government. It is recognised that a separate recovery scheme operated by the Scottish Government would be more expensive, complex and less efficient. The costs involved in setting up a separate scheme would require to be analysed alongside the benefit to the NHS of the proposed Bill. Given the significant improvements in health and safety over the last decades, it is anticipated that the number of claims covered by the proposed Bill will be relatively minimal. A detailed cost benefit analysis will require to be carried out.

Question 3: What is your view of my preference for the recovery of medical costs for the treatment of industrial disease in Scotland to be incorporated into the Injury Costs Recovery scheme and administered by the Compensation Recovery Unit, part of the UK Department for Work and Pensions?

Partially Supportive

The aim of the proposed Bill is to have consistency between industrial disease claims, road traffic accidents and accidents at work. The easiest way to seek to implement that is to have industrial disease claims in Scotland incorporated into the current scheme operated by the DWP.

There are potential issues however. It is unclear if the Compensation Recovery Unit has the capacity to deal with recoveries for disease claims. At the time of the proposed Welsh Bill in 2015 the Unit raised a number of difficulties that would be faced by having to administer a scheme purely for Wales. It is anticipated that similar difficulties would be faced operating the proposed Scottish Bill.

Question 4: Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

- (a) Government and the public sector:** Some increase
- (b) Businesses:** Some increase
- (c) Individuals:** Some increase

There are several aspects of the proposed Bill that will result in an increase in cost to the Government and the public sector. The cost will be significantly greater if the Scottish Government has to administer the recoveries.

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Even if the recoveries are to be dealt with by the DWP there will be some increase in cost in looking to set that up. The administration of the scheme will also involve some cost as matters are not as straightforward as road traffic accident claims and accidents at work.

In addition there will be an element of simply moving funds around between Government departments and public bodies. This is certainly the position as one of the largest payers of industrial disease claims historically has been Government and Local Authorities. We are likely to be in a position where Government and public bodies require to pay treatment costs to the DWP who will then require to distribute that to the NHS.

For business and individuals who may operate as sole traders, there will also be an increase. There is an element of inconsistency with the consultation paper in relation to whether the cost of repayment lies with the negligent party, or the insurance industry. Either way there will be an increase in cost to businesses etc. They will either have to meet these costs directly themselves, or if insurance companies are to pick these up, then it is inevitable that they will seek to recover that additional outlay by way of increased premiums. That will impact all premium payers.

Question 5: Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Unable to comment.

Question 6: What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?

Unsure.

Question 7: In what ways could any negative impact of the Bill on equality be minimised or avoided?

Unable to comment.

Question 8: Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

The sustainability of the proposed Bill is obviously dependent upon the final terms of the Bill and the level of treatment costs that require to be repaid. This has to be balanced against the cost of either the DWP administering the scheme, or the Scottish Government setting up a body to administer the scheme.

The non-retrospective nature of the proposed Bill is unlikely to result in significant recoveries for the NHS, certainly in the early years, and therefore there have to be questions in respect of sustainability.

Question 9: Do you have any other comments or suggestions on the proposal?

The fact that this is a proposal document, as opposed to a draft Bill, does raise potential queries given the lack of specification.

The removal of any retrospective element of the proposal is welcomed, but the inconsistency in respect of who will actually be repaying the treatment costs requires to be clarified.

NHS charges are currently subject to a cap in respect of other types of claim. It is anticipated that a similar cap will apply to industrial disease claims. That would certainly ensure a consistent approach.

One other comment is that there have been huge drives and progress made in relation to various treatments for numerous conditions over the years. It is anticipated that this progress will continue going forward. Many of these are unforeseeable at the present time. It is unclear how these may impact upon any proposed Bill.

Clearly a more detailed response can be made once the proposed Bill is published.